

## MINUTES

### COMMITTEE OF THE WHOLE

September 28, 2011

A meeting of the Committee of the Whole of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Jay Furfaro, Chair, at the Council Chamber, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, September 28, 2011, at 9:23 a.m., after which the following members answered the call of the roll:

Honorable Dickie Chang  
Honorable KipuKai Kuali'i  
Honorable Nadine K. Nakamura  
Honorable Mel Rapozo  
Honorable JoAnn A. Yukimura  
Honorable Jay Furfaro, Committee Chair

Excused: Honorable Tim Bynum

Chair Furfaro: May I ask if there is anyone in the audience that wishes to speak on any agenda items due to time constraints. Come right up, Sir. Again, I would share with you, your testimony now will prevent you from giving testimony later in the day for that item. Pat please be clear. Pat, to what item you're wishing to address now.

There being no objections, the rules were suspended for Public Speaking.

(Note: The following testimony is on item C 2011-256 on the Intergovernmental Relations Committee agenda.)

PATRICK GEGAN: Thank you very much Chair Furfaro, I am wishing to discuss Communication 256, I believe, which is about the Solar Water Heating Amendment. I thank you very much for this opportunity to address prior to having to wait after lunch, so thank you very much.

I have submitted testimony to the Council. The first piece, and I'm not sure if you received it, the first one is a solar map which I'm sure you're familiar with. Just taking a look at that, I live in the area where there's 350 calories per square centimeter per day, and my water is free. I don't even have my electric back-up on because I have solar water heating. It's very efficient. I've been in my house for two years, it's basically paid for itself given the tax incentives and stuff like that. On the second page, basically that is the law that we're looking at potentially updating or amending and it talks about the variance application.

The concern I have is with variance number 4 - the demand water heating device approved by UL installed, because it appears to me that this is being abused at the present time and it is not meeting the intent of the law. The intent of the law I believe really is you can find on page three (3) on HB 1464 where they talk about Section 13 as the intent of the Legislature that the variances provided in the act will rarely, if ever exercised or granted because the burden of proof will lie with the applicant to demonstrate that a solar water heating system regardless of location or circumstances is not cost effective in the context of a thirty (30) year mortgage. So their intent really is looking at the overall cost. If you're up in Koke'e,

understandable, a solar hot water heater may not be cost effective compared to an on demand type of system. So in that case the variance I can understand. If you continue on to the next page, line 3, the Legislature finds that it is necessary to clarify the intent of the variance provision that allows for demand water heater device; there's a potential that this provision may be used to allow a developer-builder, the purchaser of the water heating device of a single family dwelling, to circumvent the policy objectives of Act 204. It goes on and talks more about it. If you go to the next page starting at line 5, it says – therefore the Legislature intended for a consumer to have the option to use gas appliances with the full knowledge that such a system may be more costly and less efficient. To obviate any attempt to circumvent Act 204 that the Legislature intends that if the potential variance applicant is not the party who will ultimately pay for the energy cost consumption, then only paragraph 1, 2 or 3, those are the first three (3) variances, should apply. Now if you continue on to the next page, I'm sorry, 2 pages later you can actually see a spreadsheet that shows the variances that have been accepted at this point in time. If you take a look at that page, it's requested by an engineering. If you take a look at what we just said, it is the consumer who is the person who is ultimately paying the bill who can ask for the variance. Yes we are allowing in this case Douglas Engineering Pacific Incorporated to apply for and receive those variances. Now, my concern here is, those people are probably not paying, I mean to me that's a developer. You've got a full page there, all different TMK numbers, and so they're all...

Chair Furfaro: Pat, that's your first 3 minutes, and in our consent calendar you're allowed 3 minutes, and during this time there are no questions from the Council. But let me ask before I use my chairmanship to allow you another 3 minutes. May I see a number of hands in the audience that might want to testify now on the consent calendar? Seeing no one, I'm going to give you another 3 minutes, Pat, continue on.

Mr. Gegan: Thank you very much, Chair. So I question whether or not this is in accordance with Act 240, because it says the person who is paying the bill. If you continue on to the next page it continues with another spreadsheet. I will ask you to take a look at the numbers on the left hand side, numbers 577, 578. You can see here, on Kaua'i they have been given the exemption number 4 which is the instantaneous gas and I'm quite familiar with this parcel of property and I believe those are rentals. So given that, what we are doing is allowing somebody who is building a rental property to now put on a gas appliance that probably the renter is going to have to pay for. So to me what we are doing is we are actually making it more difficult for people who cannot afford a house to get ahead. We're having them pay a higher utility bill than a person who can't afford a home. The last item in my testimony has to do with the last KPAA how are we doing report, the measuring what matters for Kaua'i, something that the Council has done every 2 years. I would ask you to take a look at the bottom graph on the right hand side where it talks renewable energy by income and area. I'm not sure if yours are color or not but if you take a look at where it says 100,000 plus, that first bar where it says 53%. So 53% of the people on the island who have hot water maker \$100,000.00 or more okay, who are using it. If you go down, you take a look people who are making under \$25,000.00, \$25,000.00 to \$35,000.00, these are the people who if they own a home it's either been in the family for a while or they're working really hard to try to keep that home at the prices of homes here and you can see the numbers are down to 23%. So the law as it stands and how it is being applied to me is actually creating a social inequity because we are allowing people

who are developers and or people who are not ultimately the consumer as it states in 1464 who are paying the bill to make that decision to go with a gas appliance.

My other concern really has to do with the intent. The intent is for us to get off of fossil fuels; natural gas is still a fossil fuel. We're still importing it, it's still creating difficulties with our atmosphere, with our climate, that is not the ultimate intent of the bill. I would ask that you do take a look at the amendment and I would strongly encourage you to pass it forward and make it a recommendation to more strictly adhere to the intent of the Law 240. Thank you very much for this opportunity and thank you very much for allowing me to testify early.

Chair Furfaro: Is there anyone else in the audience that wishes to testify within our new procedure of a consent calendar or any item on today's agenda. Okay, seeing no one, I would like to call the Committee... Nadine's, to order, by turning over the gavel to the Chairwomen of the Planning Committee.

There being no objections, the meeting recessed at 9:29 a.m.

The Committee reconvened at 11:39 a.m. and proceeded as follows:

Chair Furfaro: I'm going to ask if I can have the County Attorney up, please.

There being no objections, the rules were suspended.

#### EXECUTIVE SESSION:

ES-494 Pursuant to Hawai'i Revised Statutes Sections 92-4, 92-5(a)(4) and (8), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an executive session to provide the Council's Committee of the Whole a briefing regarding legal issues related to the implementation of Kaua'i County Charter Section 3.19 and Bill No. 2410. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

IAN JUNG, DEPUTY COUNTY ATTORNEY: Good Morning Chair, members of the Council. With regard to ES-494,...

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Chang moved to convene in Executive Session at 11:41 a.m., as recommended by the County Attorney, seconded by Ms. Yukimura, and unanimously carried.

There being no objections, the Committee recessed at 11:41 a.m.

The Committee reconvened at 5:12 p.m., and proceeded as follows:

Minutes of the August 10, 2011 Committee of the Whole.

Upon motion duly made by Mr. Kualii, seconded by Mr. Chang, and unanimously carried, the Minutes of the August 10, 2011 Committee of the Whole meeting was approved.

Minutes of the August 24, 2011 Committee of the Whole.

Upon motion duly made by Mr. Rapozo, seconded by Mr. Kualii, and unanimously carried, the Minutes of the August 24, 2011 Committee of the Whole meeting was approved.

The Committee proceeded on its agenda items as shown in the following Committee Reports which are incorporated herein by reference:

**CR-COW 2011-23:** on COW 2011-09 Communication (09/08/2011) from Council Chair Jay Furfaro, requesting the Administration's presence to discuss C 2011-241, relating to the Fourth Quarter Reports addressing vacancies new hires, reallocations and promotions in the County.  
**[Received for the Record.]**

**and**

C 2011-241

Communication (08/08/2011) from the Director of Personnel Services, transmitting for Council information, the Fourth Quarter Reports (April – June 2011) relative to vacancies, new hires, reallocations and promotions in the County, pursuant to Section 20 of the County Budget Ordinance.

**CR-COW 2011-24:** on C 2011-254

Communication (08/23/2011) from the Chair of the Charter Review Commission, requesting (1) comments from the Council regarding a proposal to amend Article XV of the Kaua'i County Charter, Relating to Establishing a Department of Human Resources, and (2) whether the Council endorses the transitioning of the existing Department of Personnel Services to a more comprehensive and fully functional Human Resources Department, as outlined in the proposed amendment.

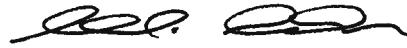
• Charter Amendment: Article XV of the Kaua'i County Charter Relating to Establishing a Department of Human Resources

**[Received for the Record.]**

There being no objections, the Committee recessed at 6:07 p.m.

The Committee reconvened at 6:32 p.m. and there being no further business, the meeting was adjourned.

Respectfully submitted:



Ihilani C.J. Laureta  
Secretary

APPROVED at the Committee of the Whole Meeting on October 12, 2011:



JAY FURFARO  
CHAIR, COMMITTEE OF THE WHOLE